IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6798 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PURSHOTTAM N THAKKER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6798 of 2001
MR SHALIN N MEHTA for Petitioner No. 1
MR SN SHELAT, ADVOCATE GENERAL with
MS SHRUTI D TRIVEDI, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/12/2003

ORAL JUDGEMENT

By way of the present petition, the petitioner has challenged the decision of respondent No.1, communicated by its Deputy Secretary vide his letter dated 8-3-2001, rejecting the petitioner's demand for promotion to the post of Secretary, Gujarat Legislature Secretariat, with effect from 29-12-1987, instead of 6-1-1989, as well as rejecting the demand of the

petitioner in connection with the pay scale of Rs.5900-6700/-.

2) The facts of the case leading to the present controversy are as under :

At the relevant time, the petitioner was serving as a Deputy Secretary in the Gujarat Legislature Secretariat. Since at the said time, one Mr.J.M.Parekh, who was appointed to the said post, was repatriated to his parent department, i.e. Judiciary, the petitioner was given the charge of the post of Secretary, Gujarat Legislature Secretariat, by Notification dated 17th December, 1987. As per the said notification, which is at page 31, the petitioner was also given charge allowance as per the Rules. Subsequently, by notification dated 6th January, 1989, the petitioner was substantively promoted and appointed as Secretary in the Gujarat State Legislature Secretariat, with effect from 29-12-1987. Though such appointment is made in view of the Notification dated 6th January, 1989, retrospective effect is given by which such benefit of promotion is given to the petitioner with effect from 29-12-1987. The said notification is finding its place at page 33, annexure-B in the compilation. It is also mentioned in the said notification that the Governor of Gujarat, after consultation with the Speaker, Gujarat Legislature Assembly and the Gujarat Public Service Commission, was pleased to direct that Mr.P.N.Thakkar, the present petitioner, working as Deputy Secretary is promoted and appointed as Secretary with effect from 29-12-1987.

Subsequently, by another Notification dated 27th October, 1989, the petitioner was promoted/appointed as Secretary with effect from 6th January, 1989. Accordingly, retrospective benefit of promotion, which was given to the petitioner by earlier notification, was taken away by the subsequent notification and as per the latter notification, such promotion was given with effect from 6th January, 1989.

3) Being aggrieved by the aforesaid action of the respondents, the petitioner herein preferred Special Civil Application No.2648/1992. In the said Special Civil Application, the petitioner had also prayed that the Secretary, Legislature Secretariat, should be paid the pay-scale and all other benefits available to the Secretary of the State Civil Secretariat. A learned Single Judge of this Court (Coram:R.K.Abichandani, J.), by his order dated 28-2-2000, came to the conclusion

that, while passing the order in question, by which alteration was effected in the earlier order by changing the petitioner's date of promotion, no hearing was given to the petitioner, he was required to be heard before altering the date of promotion. It has been observed by the learned Single Judge in para 4 of the judgement as under :

"4. Apart from the fact whether there was a valid ground for altering the earlier order by changing the petitioner's date of promotion, it is clear that once the petitioner was promoted by the Notification dated 6-1-1989 with effect from 29-12-1987, being the date from which he was in-charge of the post in question, it was incumbent upon the authorities to have heard the petitioner before making any order which worked adversely against the petitioner by virtue of his date of promotion being changed from 29-12-1987 to 6-1-1989. Admittedly, the petitioner was never heard before the making of such an adverse order. In fact, there was already a mention in the Notification dated 6-1-1989 about the Governor having consulted the Speaker and the G.P.S.C. while promoting and appointing the petitioner as Secretary with effect from 29-12-1987. However, even if that Notification did not reflect the correct state of affairs, the petitioner was entitled to know and be given an opportunity of being heard before any adverse decision was taken against him by shifting his date of promotion to 6-1-1989. The impugned action of altering the earlier date of promotion of the petitioner from 29-12-1987 to 6-1-1989 under the Notification at Annexure-D to the petition cannot therefore be sustained. The concerned authorities of the respondent can take such a decision only after hearing the petitioner."

The learned Single Judge has dealt with the question about parity in pay scale in para 5 of the order and relied on Resolution passed by the Government dated 17-2-1988, which is as under :

"RESOLUTION :

The pay scale of Rs.5300-6200 for the post of Secretary, Gujarat Legislature Secretariat is prescribed vide G.L.S. Notification No.E-2 (5)/18970 dated 27-11-1987.

The pay-scale for the members of the corresponding grade i.e. Secretary (Non I.A.S.) in the Civil Secretariat of Government is Rs.5900-6700, which is higher than the pay-scale prescribed for the Secretary, Gujarat Legislature Secretariat. The functions and the responsibilities involved for the post of Secretary, Gujarat Legislature Secretariat is more or less equivalent to the functions and responsibilities of the members of corresponding grades in the Civil Secretariat of the Government. An element of anomaly in the pay-scale between two equivalent posts was under active consideration of the Governor for some time past.

Now, the Governor of Gujarat, in consultation with the Speaker, Gujarat Legislative Assembly, is pleased to prescribe the pay-scale of Rs.5900-6700 (Pre-revised Scale) w.e.f. 01.08.1997 as personal pay-scale for the present Incumbent Shri K.M.Panchal till the Recruitment Rules for the post of Secretary, Gujarat Legislature Secretariat is amended.

This issues with the concurrence of Finance Department vide its letter No.PGR-1389-1640-M dated 16.02.1998.

xxxx xxxxx xxxxxxx "

Relying upon the said resolution, the learned Single Judge has observed that the concerned authority found that the functions and responsibilities of the post of secretary, Gujarat Legislature Secretariat, were more or less equivalent to the functions and responsibilities of the members of corresponding grades in the Civil Secretariat of the Government and that the anomaly in the pay scales between two equivalent posts was under active consideration of the Governor, and the Governor, in consultation with the Speaker, prescribed the pay scale of Rs.5900-6700 (pre-revised Scale) with effect from 1-8-1997 as personal pay scale for the then incumbent Mr.K.M.Panchal till the Recruitment Rules were amended. The learned Single Judge, therefore, directed the respondent-authority to consider the case of the petitioner on the lines similar to the approach adopted in making the Resolution dated 17-2-1998. The learned Single Judge, therefore, directed the respondents to consider the question of alteration in the date of the

petitioner's promotion, after giving him opportunity of being heard and as regard the pay-scale, the respondents were directed to take appropriate decision by taking into account, the resolution dated 17-2-1998, as was done in respect of Mr.K.M.Panchal. The learned Single Judge further directed the respondents to take appropriate decision in accordance with law and in the light of the observations made in the judgement.

4) On the basis of the aforesaid order of the learned Single Judge, the petitioner made a representation in writing to the authority and it is not in dispute that he was also heard personally in this behalf. The said representation of the petitioner dated 16-4-2001 is produced at page 59 of the compilation. The Deputy Secretary to the Government, by his communication dated March 8, 2001, informed the petitioner that the Government has decided that the request of the petitioner, in connection with the retrospective promotion to the post of Secretary, Gujarat Legislature Secretariat with effect from 29-12-1987, cannot be acceded to, and that the petitioner cannot be granted the pay scale equal to Secretary to Government in the State Civil Secretariat (pay scale of Rs.5900-6700/-). It is the aforesaid communication dated March 8, 2001, which is impugned at the instance of the petitioner in the present petition.

5) Learned advocate Mr.Shalin Mehta has attacked the aforesaid decision, which is communicated to the petitioner, on the following grounds :

(i) That the decision of the Government is in violation of the direction given by this Court in Special Civil Application No.2648/1992.

(ii) That the earlier notification, by which benefit of promotion was given to the petitioner from 29-12-1987, was correct and the date was not required to be altered subsequently, as the earlier notification was issued after consulting the G.P.S.C.

(iii) That the impugned order, by which the representation of the petitioner is rejected, is a non-speaking order and the observations of the Honourable High Court are not taken into account at all.

A N D

(iv) The decision of denying the pay-scale, as prayed for, is arbitrary and contrary to the observations of this Honourable Court in Special Civil Application No.2648/1992.

6) Mr.S.N.Shelat, learned Advocate General, on the other hand, has submitted that, by the impugned communication, the petitioner is only communicated the decision taken by the State Government and the reasons are available only in the original file. It is submitted by the learned Advocate General that the Deputy Secretary has not taken the decision, he has only conveyed the decision taken by the Government to the petitioner. The learned Advocate General has further submitted that the first notification was issued on 6th January, 1989, by which the retrospective promotional benefit was given to the petitioner w.e.f. 29-12-1987, but at that time, G.P.S.C. was not consulted in connection with giving retrospective effect of such promotion. Therefore, subsequently, the said lacuna in the decision was rectified, by issuing a fresh notification dated 27th October, 1989, and the earlier mistake, of giving promotion with retrospective date to the petitioner, was rectified by altering the said date. Mr.Shelat, learned Advocate General, further submitted that the post in question falls within the purview of G.P.S.C. and since the G.P.S.C. was consulted only in connection with giving promotion and subsequently, when G.P.S.C. objected the giving of retrospective promotion to the petitioner, ultimately, fresh notification dated 27th October, 1989 is issued and the same cannot be said to be an incorrect decision.

7) Mr.Shelat, learned Advocate General, has submitted that so far as pay scale is concerned, the petitioner is not entitled to the revised pay scale as the petitioner has retired by taking voluntary retirement on 2-7-1992 and subsequently, in the year 1998, incumbent of the said post, vide a notification, was given pay scale of Rs.5900-6700. But after considering the facts and circumstances of the case, it has been decided by the Government that so far as the Secretary in the Legislature Secretariat is concerned, he cannot be given the same pay scale, which is given to other Secretaries in other departments of the State. On careful consideration, the demand of the petitioner, for getting the said scale at par with other Secretaries of the State Government, is rejected by the State Government. He submitted that such decision, in connection with revision of pay cannot be interfered with by this Court on the basis of "equal pay for equal work". He submitted that,

even otherwise, the duty discharged by other Secretaries, who are in I.A.S. cadre, as compared to the duty discharged by the Secretary to the Gujarat Legislature Secretariat, and educational qualifications for both these posts, also differ. It is, ultimately, submitted by the learned Advocate General that the petitioner has no case either for getting retrospective date of promotion or for revised pay scale and, therefore, this petition is required to be dismissed. It is also submitted by the learned Advocate General that the observations of the Honourable High Court were taken into consideration at the time of taking the fresh decision, and, ultimately, the decision taken by the Government is communicated to the petitioner. Naturally, as it is a mere communication of the decision, no detailed reasons are given in the same.

8) I have heard both the sides at length. In my view, there is absolutely no substance in the present petition. It is required to be noted that the petitioner was given a status of In-charge Secretary. Simply because the petitioner has held charge of the said post, it cannot be said that he was substantively holding the said post, and, ultimately, by notification dated 6th January, 1989, he was substantively appointed as Secretary, Gujarat Legislature Secretariat. It is, no doubt, true that by notification dated 6th January, 1989, the petitioner was retrospectively promoted with effect from 29-12-1987. It is also equally true that, in the said notification, there is a reference about consultation with G.P.S.C. It is not in dispute that the post in question falls within the purview of G.P.S.C. and, therefore, without consulting G.P.S.C., the petitioner cannot be given promotion or appointment on the said post. By subsequent notification dated 27th October, 1989, the earlier notification was modified and the retrospective benefit, which was given to the petitioner, was taken away, by altering the date of promotion. It is pointed out in the affidavit-in-reply, as well as it is argued by the learned Advocate General that since G.P.S.C. was not consulted for giving promotion with retrospective effect and since, subsequently, G.P.S.C. objected to such retrospective promotion, a fresh notification was required to be issued. In para 14 of the reply, it is specifically averred that on receipt of the judgement of this Court dated 28-2-2000 delivered in Special Civil Application No.2648/1992, the State Government considered the whole matter carefully and conscious decision was taken at the level of His Excellency the Governor of Gujarat and the request/representation of the petitioner was not accepted

and the petitioner was thereafter informed accordingly. Paragraph 22, which is the relevant paragraph of the affidavit-in-reply, is as under :

"22. With respect to the contents of para 4 (e) of the petition, it would be pertinent to mention that in so far as the first point regarding grant of retrospective promotion with effect from 29-12-1987 as Secretary, GLS to the petitioner is concerned, the factual position is as mentioned below :-

(i) The post of Secretary, GLS was vacant from 29-12-1987 due to repatriation of Shri J.M.Parekh to his parent cadre, i.e. Judicial Service.

(ii) The petitioner, the then Dy.Secretary, GLS, was entrusted with the additional charge of the post of Secretary, GLS with effect from 29-12-1987. Since the petitioner was holding the additional charge of that post with effect from 29-12-1987, the petitioner was entitled to get the Charge Allowance as per normal rules in force for holding such additional charge.

(iii) The proposal for filling up the vacancy of Secretary, GLS by way of promotion was sent by the then Hon.Speaker, vide his letter dated 4-5-1988.

(iv) After elaborate discussion on feasibility and merits of the proposal, the then Governor of Gujarat passed orders on 6-12-1988 for promotion of the petitioner to the post of Secretary, GLS.

(v) Thereafter, the Gujarat Public Service Commission was consulted which conveyed its concurrence to such promotion, vide its letter dated 28-12-1988.

(vi) Thereafter, the decision regarding grant of promotion to the petitioner as Secretary, GLS was communicated to the GLS on 4-1-1989.

(vii) Thereafter, the GLS issued a Notification promoting the petitioner as Secretary, GLS with effect from 29-12-1987 (i.e. with effect from the date on which the post fell vacant). The Government came to know about grant of such retrospective promotion only when it received the

letter dated 25-1-1989 from the GPSC wherein the GPSC desired to know as to how the petitioner was granted such retrospective promotion to the petitioner.

(viii) The matter was thereafter referred to H.E.the Governor of Gujarat - the appointing authority in case of the Secretary, GLS - who confirmed that the Governor had accorded approval for grant of promotion to the petitioner only with prospective effect (i.e. with effect from the date of issuance of promotion orders) and the then H.E. the Governor of Gujarat also ordered that the GLS should cancel the Notification dated 6-1-1989 according retrospective promotion to the petitioner and also to issue a fresh Notification for promotion to the petitioner as Secretary, GLS with effect from 6-1-1989 only. Accordingly, the Government informed the GLS about the then H.E. the Governor's decision on 20-3-1989.

(ix) Instead of complying with the orders given by H.E. the then Governor of Gujarat, the GLS raised a few issues which were considered and submitted before the then Governor who after careful consideration of all the issues involved in the matter, reiterated his earlier decision.

(x) The GLS was again informed by the Government on 20-10-1989 about reiteration of the orders of H.E. the then Governor. Ultimately, on 27-10-1989 the GLS cancelled its Notification dated 6-1-1989 and accorded promotion to the petitioner as Secretary, GLS with effect from 6-1-1989."

9) It is also averred in the affidavit-in-reply that in all the Government posts, such promotions are normally given with prospective effect and not from the date of occurrence of vacancy and the officers can get promotions only from the date of assumption of regular charge of the promotional post. The question, which requires consideration is, whether, initially, when the proposal was sent to the G.P.S.C the same was sent with a specific recommendation of giving such promotion with retrospective date of the year 1987. In this connection, learned Advocate General made available the original file, in order to point out as to in which manner the proposal was sent by the department. The proposal was sent by the General Administration Department to the Secretary of G.P.S.C. on 28th October, 1988. In the

matter of promotion to the aforesaid post, the particulars of four officers of the department were sent. The Deputy Secretary of the General Administration Department recommended the case of the present petitioner for promotion to the aforesaid post, by the said letter.

10) After getting approval of the G.P.S.C., the General Administration Department, by its letter dated 4-1-1989, informed the Secretary of the Gujarat Legislature Secretariat, that the G.P.S.C. has given approval with certain observations. Ultimately, it is on the basis of the aforesaid communication of the General Administration Department, that the Gujarat Legislature Secretariat issued notification dated 6th January, 1989, by which the petitioner was given promotion with retrospective effect. The aforesaid correspondence is finding place in the file and the same is also shown to Mr.Shalin Mehta, learned advocate. Looking to the said correspondence, it is clear that, as such, it is now not in dispute that when the proposal was sent to the G.P.S.C., and subsequently when promotion was given to the petitioner on the said post, no proposal was sent to the G.P.S.C. for sanction of promotion to the petitioner with retrospective effect. In that view of the matter, the G.P.S.C. subsequently objected to such promotion given to the petitioner with retrospective effect. G.P.S.C had given consent for giving promotion to the petitioner but there was no question of giving any sanction to such promotion with retrospective effect, naturally, because there was no proposal sent by the Government to the G.P.S.C. in this behalf. Therefore, the first notification was issued either by way of mistake or contrary to the sanction granted by the G.P.S.C. for filling up the said post by way of promotion. Ultimately, when G.P.S.C. objected to such promotion the second notification was issued, which was challenged in the earlier petition, as pointed out earlier. Mr.Shalin Mehta has also clearly conceded, after going through the file, that no proposal was sent to the G.P.S.C. for giving promotion to the petitioner with retrospective effect from 29-12-1987. He, however, submitted that the Secretary of the Gujarat Legislature Secretariat had recommended the case of the petitioner for retrospective promotion and therefore, the department should have sent appropriate proposal, recommending to the G.P.S.C. to give promotion to the petitioner from the year 1987. However, even if that be so, the same should not carry the case of the petitioner any further, as, now, it is an admitted fact that no such proposal was ever sent to the G.P.S.C. On the contrary, it is clear that the proposal was given for considering the case of

the petitioner for promotion and it was never mentioned in the proposal that the petitioner can be given promotion with back date. When the post in question is required to be filled in through G.P.S.C., the G.P.S.C. was justified in objecting to such promotion and therefore, the same was clarified by the second notification. The petitioner has not even joined G.P.S.C. as a party in the present proceedings. It was asked to Mr.Mehta whether he is willing to join G.P.S.C., to find out whether any such proposal, recommending the case of the petitioner with retrospective effect, was received by G.P.S.C., he submitted that it is not necessary to join G.P.S.C., in order to find out whether any such proposal was sent. Apart from that aspect, looking to the stand taken by the Government as well as considering the aforesaid factual aspect, when it is clear that, at no point of time, proposal was sent to the G.P.S.C. for giving retrospective promotion to the petitioner, in my view, it cannot be said that the Government has committed any error of law in altering the date given in the earlier notification, as, admittedly, the petitioner was not entitled to such benefit in view of the fact that no such consultation with G.P.S.C. was made before giving such promotion. The State Government, after the decision of this Court in the earlier matter, has already given hearing to the petitioner and ultimately, not acceded to the request of the petitioner to give benefit of promotion with retrospective effect. In my view, the said decision cannot be said to be illegal in any manner. As a matter of fact, the said decision is absolutely in consonance with the provisions of law and the said decision is taken in accordance with law. Even if, by mistake, the petitioner was given promotion with retrospective effect by the earlier notification, such mistake can always be corrected by altering the date, and after hearing the petitioner and after considering the said aspect, accordingly, the Government has corrected the mistake.

11) Mr.Mehta, however, argued that while taking such decision, the Government has not taken into account the observations of the learned Single Judge. It is, no doubt, true that the petitioner is communicated about rejection of representation and no reasons or findings are given, as to on what basis, the representation of the petitioner is rejected by the State Government. The learned Advocate General, however, submitted that the Deputy Secretary has merely communicated the said decision and the reasons for rejecting the representation are in the original file. The said file was also made available to the Court and was also shown to Mr.Shalin

Mehta and as per the same, the Government has considered both the questions, regarding giving promotion with retrospective effect as well as demand of pay scale by the petitioner. There is also a reference about this Court's order delivered in Special Civil Application No.2648/1992. It has been mentioned that the Government came to know about such promotion with retrospective effect only when it received the letter dated 25-1-1989 from the G.P.S.C., wherein G.P.S.C. desired to know as to how the petitioner was promoted as Secretary, Gujarat Legislature Secretariat retrospectively, when there was no such proposal from His Excellency the Governor, as also when G.P.S.C. had not accorded approval for grant of such promotion with retrospective effect. As per the noting in the file, the matter was thereafter referred to His Excellency the Governor of Gujarat, who confirmed that he had accorded approval for grant of promotion to the petitioner only with prospective effect and His Excellency the Governor of Gujarat, thereafter also ordered that the Gujarat Legislature Secretariat should cancel the notification dated 6-1-1989, granting promotion with retrospective effect and issue a fresh notification. There are also other details given in the said file, in respect of the decision taken. As regards the noting on the file, it is earlier to the decision of this Court rendered in Special Civil Application No.2648/1992. In view of the said decision of this Court, the matter was again taken up for consideration and, ultimately, the decision was taken that the petitioner cannot be granted promotion with retrospective effect, as well as, that he cannot be granted pay scale of Secretary to Government in the State Civil Secretariat. As per the noting on the file, the matter was discussed by the Chief Secretary with His Excellency the Governor at 5:30 p.m. on 27th February, 2001 and His Excellency the Governor was also apprised of the facts of the case as well as the contents of the High Court judgement and, ultimately, a fresh decision was taken, by which the request of the petitioner for promotion with retrospective effective as well as regarding appropriate pay scale was rejected.

12) Considering the aforesaid aspect, it is clear that the observations of this Court were taken into account and ultimately, the fresh decision was taken, after hearing the petitioner. It is, no doubt, true that the petitioner should have been informed at the time of communicating the decision, about the reasons for refusing the promotion with retrospective effect. In view of this, Mr.Mehta argued that the matter is required to be remanded, asking the Government to give reasons,

but in my view, when the facts of the case are absolutely clear to the effect that no proposal was sent to the G.P.S.C., for giving promotion with retrospective effect to the petitioner, as well as considering the fact that the post in question falls within the ambit of G.P.S.C. as well as considering the fact that the decision of the Government for not accepting the request of the petitioner for giving him appropriate pay scale is a decision taken in accordance with law, no useful purpose will be served in asking the Government to give reasoned order and it would be merely an academic exercise. When the facts of the case are clear, the petition can be decided on its own merits as per the material available on record. The Government should take appropriate care in future and the recommendation of the High Court should be dealt with appropriately in the order. At the time of communicating such decision, the person, who is likely to be affected is required to be told as to on which ground his request is turned down, so that the aggrieved party can take appropriate proceedings in accordance with law, and he is also supposed to know on which ground his request is turned down. Since, in the instant case, the factual aspect, as stated above, is not in dispute about not sending proposal to G.P.S.C. for promotion with retrospective effect, there is no substance in the say of the petitioner that the Government has wrongly altered the date, by which, retrospective effect of promotion, which was given in the earlier notification, is taken away. The petitioner has been given the opportunity of being heard and after hearing him, and, after considering his representation, a fresh decision is taken. In view of what is stated above, there is absolutely no substance in the contention of the petition that the petitioner was required to be promoted with effected from 29-12-1987, and there was no reason to alter the aforesaid date of promotion. The petitioner was given the promotion from the date on which he was appointed and the petitioner has not made out any case as to how he is entitled to such promotion with retrospective effect. In my view, the Deputy Secretary of General Administration Department has also not acted in a proper manner. If the contentions of Mr.Mehta are found to be correct and even if the Deputy Secretary of General Administration Department recommended the case of the petitioner, such recommendation was never sent to the G.P.S.C. and even if such proposal was sent, it was highly uncalled for on the part of the Deputy Secretary, General Administration Department to recommend the case of the petitioner for promotion, with retrospective effect. I, therefore, do not find any substance in the aforesaid contentions of Mr.Mehta so far as it relates to altering the date of

promotion of the petitioner.

13) So far as the next contention in connection with pay scale is concerned, it is required to be noted that the petitioner had retired as back as in the year 1992, by taking voluntary retirement and in the year 1998, incumbent of the said post Mr.K.M.Panchal got the benefit of revised pay scale. If, in the year 1998, someone, who held the post in that year, had been wrongly given the benefit of revised pay scale, that, ipso facto, would not entitle the petitioner to get the said pay scale, as, the petitioner has already retired in the year 1992. In the noting on the file, this question of revised pay scale is considered at length, however, such noting is prior to the judgement of the learned Single Judge. In the affidavit-in-reply about the pay scale it has been stated as under on page 8:-

"22 (e)

(iii) The duties and responsibilities of "Secretary, GLS" and those of Secretary General of Parliament cannot be compared. The hierarchical juxtaposition of the posts in the GLS and in the State Secretariat would clearly show that the post of "Secretary, GLS" is not really a post equivalent to a post of "Secretary to Government" cannot be compared in the light of the fact that a "Secretary to Government" has myriad administrative, official and other duties and responsibilities to perform and that he has State-wide jurisdiction.

(iv) The post of "Secretary to Government" in the State Secretariat is filled up by Super-time Scale IAS officers, by way of promotion of technical officers, like engineers and above and District & Sessions Judge or above only. In the GLS, the promotions to the posts of "Secretary, GLS" were given from the feeder cadre of Deputy Secretary/Joint Secretary (now, the Additional Secretary has also been included in the feeder cadre) without following the principles of selectivity as laid down in GR, GAD, dated 20-5-1978 which is applicable to the post of Secretary to Government (other than IAS officers). If the principles of selectivity as laid down under GR, GAD, dated 20-5-1978, are applied, it would enable only the best among the eligible officers to get promoted as "Secretary to Government". These principles have not been adopted for the post of "Secretary, GLS" and,

therefore, seniority is of prime importance while deciding suitability of an officer for appointment as "Secretary, GLS".

(v) The State Secretariat employees whose entry in the Government Service is from the same examination and from the same agency (i.e. GPSC) and on the basis of the same recruitment rules as in the case of their counterparts in the GLS, do not rise above the post of Additional Secretary to Government.

(vi) In the constitutional body, like GPSC, also, the pay scale of the Secretary, GPSC (when appointed by way of promotion) is not the same as that of "Secretary to Government"."

16) In State of Haryana Vs. Haryana Civil Secretariat Personal Staff Association reported in AIR 2002 Supreme Court page 2589, it is observed in para 9 as under :

"This Court in the case of Secretary, Finance Department & Ors. Vs. West Bengal Registration Service Association & Ors., 1993 Supp (1) SCC 153, dealing with the question of equation of posts and equation of salaries of Government employees, made the following observations :

"We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on

account of the changing nature of job requirement. The facts which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to coordinate with other departments, etc. We have also referred to the history of service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required (v) avenues of promotion, (vi) the nature of duties and responsibilities (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasize that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues of promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the

demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice.

(Emphasis supplied)

... ..."

15) The Hon'ble Supreme Court in State of Bihar & Ors. Vs. Kameshwar Prasad Singh reported in AIR 2000 Supreme Court, 2306 has observed in para 30 as under:

"The concept of equality as envisaged under Art.14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly, wrong judgement passed in favour of one individual does not entitle others to claim similar benefits."

Relying upon this, it is argued by Mr.Shelat that simply because somebody is given the benefit of pay scale, that ipso facto, will not create any right in favour of the petitioner, who has already retired in the year 1992. Mr.Mehta, however, argued that, in the past, one Mr.Barot was given retrospective promotion. However, if somebody was given any wrong promotion, that by itself will not create any right in favour of the petitioner.

16) In the case of State Bank of India and another Vs. M.R. Ganesh Babu and Ors., AIR 2002 Supreme Court 1955, it has been observed by the Apex Court in para 17 and 18 as under :

"17. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It

cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgement by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgement is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgement of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgement of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.

18. Since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay or the plea of discrimination, as the case may be, (See (1998) 3 SCC 91, Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others : (1993) 1 SCC 539, State of Madhya Pradesh and another Vs. Pramod Bhartiya and others; (1996) 11 SCC 77 : 1997 AIR SCW 1057 : AIR 1997 SC 1788 State of Haryana Vs. Jasmer Singh and (1998) 1 SCC 422, State of U.P. and others Vs. Ministerial Karmachari Sangh)."

17) Mr.Shelat, the learned Advocate General has relied upon the decision of the Apex Court in the case of Government of Andhra Pradesh & Anr. Vs. P.Hari Hara Prasad and others, reported in AIR 2002 Supreme Court 3645, wherein the Apex Court has observed in paras 4 and

5 as under :

"4. First we would consider the case in respect of employees of subordinate Courts. The pay scales claimed by them on the basis of Government Order of 1971 have been accepted by the High Court holding that posts in two services are identical and the officials in two different service perform same nature of duties. The two sets of employees are governed by different Rules and, therefore, their pay scales and other conditions of service are to be governed by the respective rules applicable to them. Ordinarily, it is not permissible to go into the nature of duties of employees while exercising writ jurisdiction under Article 226 of the Constitution of Indian and on that basis direct grant of pay scales which are applicable to employees of a different service. The question of grant of parity of pay to the employees of the Courts came up for consideration before a three-Judge Bench in State of Maharashtra Vs. Association of Court Stenos, P.A. P.S. & Anr., (2002) 2 SCC 141. Referring to the decision in Supreme Court Employees' Welfare Association Vs. Union of India & Anr., (1989) 4 SCC 187, it has been held therein that the judgement of the High Court in exercise of its jurisdiction under Article 226 issuing writ of mandamus directing a particular scale to be given to the Courts Stenographers, Personal Assistants and Personal Secretaries attached to the Hon'ble Judges of the High Court cannot be sustained. It has further been held that it is no doubt true that the doctrine of "equal pay for equal work" is an equitable principle but it would not be appropriate for the High Court in exercise of its discretionary jurisdiction under Article 226 to examine the nature of work discharged by the staff attached to the Hon'ble Judges of the Court and direct grant of any particular pay scale to such employees. The position is almost same here.

5. In view of the aforesaid, the issue of the writ of mandamus, directing the parity of pay scales on the assumption that posts are identical and the two sets of employees performs the same nature of duties cannot be sustained in so far as the employees of the subordinate Courts are concerned."

18) Considering the matter from the aforesaid angle, in my view, there is absolutely no justification on the part of the petitioner in demanding higher pay scale and similarly, simply because, in 1998, the incumbent of the post was given the benefit of higher scale, that by itself would not create any right in favour of the petitioner, especially when the petitioner has retired in the year 1992, and the pay scale, on which the petitioner was serving at the relevant time, has never been revised by the State Government at any point of time.

Under the circumstances, there is no substance in any of the arguments advanced by Mr.Mehta. It is, no doubt, true that, while asking the Government to take a fresh decision, after hearing the petitioner, this Court, in Special Civil Application No.2648/1992, had made certain observations. However, this Court has clearly asked the Government to take the decision, in accordance with law. Therefore, the Government, after considering the legal aspect of the matter, as indicated in this order, has rejected the claim of the petitioner, both in respect of retrospective promotion as well as in connection with the pay scale, and therefore, the Government has not committed any error of law in taking the impugned decision. Mr.Mehta has also fairly conceded that this Court has not decided any point finally in the earlier petition and all questions were kept open and Government was required to take the decision in accordance with law. This Court has not given final verdict in the earlier matter, adjudicating the right of the petitioner finally, and, ultimately, the matter was left to the Government for fresh consideration and decision. Therefore, it cannot be said that the decision of the Government is contrary to the direction of this Court, because, a fresh decision is taken, after considering the facts and circumstances of the case, as well as considering the position of law and the said decision can be said to have been taken in accordance with law. The petitioner was also given opportunity of being heard before taking such decision.

19) Learned Advocate General, at this juncture, has relied upon decision rendered in the case of Vipin T.Mehta Vs. Chairman & Managing Director, Indian Petrochemicals Corporation Ltd. & Anr. reported in 35 (2) GLR 1456 to substantiate his say that it is not necessary to remand the matter, asking the Government to give reasons in support of the impugned decision. In the said decision, it is observed in para 20 on page 1471 as under:

"Therefore, while holding that the respondent-Corporation should record reasons and should communicate the same to the concerned employee, I am not striking down the action of the respondent Corporation in these cases as in my opinion no useful purpose will be served because reasons are already stated in the affidavit-in-reply and since no (sic) such reasons are not in any way assailable, no interference of this Court is called for."

20) In view of what is stated above, I do not find any substance in any of the submissions of Mr.Mehta in any manner. There is absolutely no justification in the claim of the petitioner for getting retrospective promotion or for getting higher scale at par with other Secretaries of various departments of the Government. Therefore, this petition is absolutely without any merit and is required to be dismissed and accordingly the same is dismissed. Rule is discharged, with costs quantified at Rs.2,000/-.

(P.B.Majmudar,J.)
/malek